



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Fbh

In re the Application of:

Philippe LESCOCHE

Art Unit: 4153

Application No.: 10/532,560

Examiner: Mellon, D.

Filed: April 25, 2005

Attorney Dkt. No.: 71247-0038

For: MEMBRANE FOR TANGENTIAL FILTRATION AND PRODUCTION METHOD
THEREOF

ELECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 16, 2008

Sir:

In response to the restriction requirement of November 20, 2008, Applicant elects the Group I invention, claims 1-9, with traverse.

In the restriction requirement, the Examiner cites United States Patent No. 5,505,841 to Pirbazari et al. (Pirbazari) as grounds for ignoring the PCT rules for restriction requirement, and particularly the mandate that a device and its method of use should be examined together.

In the restriction, the Examiner alleges that the inventions do not share a common technical concept, citing Pirbazari as proof of this. The reasoning for the restriction is improper for two reasons. First, the question is not whether the invention is shown in Pirbazari but whether apparatus claim 1 and method claim 10 share a common technical concept. The Examiner alleges that the features of the membrane with porous support, flow channel, inlet, outlet, separator layer and the ability of the permeate to pass through the porous support are found in Pirbazari and this means that restriction is proper. However, the features of the membrane with porous support, flow channel, inlet, outlet, separator layer and the ability of the permeate passing through the porous support are found in each of claims 1

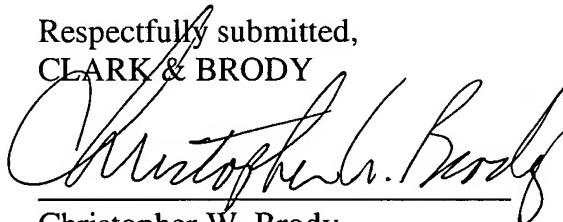
and 10 so that the claims do, in fact, share the same technical features and restriction is improper for this reason.

Moreover, the Examiner is in error in classifying the shared technical feature of the claims. The claims are more than the listing of components recited above. The Examiner says nothing about the details of the support as found on page 7, second column, lines 9-17, including the mean porosity gradient. These features are also present in claim 10. This means that the Examiner has oversimplified the invention to somehow justify the restriction requirement; the proper shared technical feature is not correctly mentioned by the Examiner and this also taints the restriction requirement, requiring at least a remake of the requirement.

To summarize, this application is a national stage application entitled to use the PCT rules of restriction and using these rules means that the apparatus and method of use claims must be examined together. Therefore, an examination of all claims is respectfully requested.

Applicant respectfully submits that there is no fee required for this submission, however, please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,
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